



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MND, FF

For the tenant - MNSD

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of this application. The tenants applied to recover the security deposit.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Are the tenants entitled to recover the security deposit?

Background and Evidence

The parties agree that this tenancy started on February 01, 2013 for a fixed term tenancy which was not due to expire until January 31, 2014. The tenants vacated the unit on December 01, 2013. Rent for this unit was \$1,600.00 per month and was due on the 1st of each month. The tenants paid a security deposit of \$800.00 on December 28, 2012. Both parties attended a move in and a move out condition inspection of the unit.

The landlord testifies that during the move out inspection it was noted that the kitchen countertop had a mark the size of a softball on it. This countertop is 12 feet long and the mark was very noticeable. The landlord testifies that the tenant KM acknowledged that they had caused this mark but seemed to think it would only cost a few hundred dollars to replace the countertop. The landlord testifies that the actual cost to replace the countertop is \$698.25 as seen on the quote provided in evidence. The landlord testifies that this quote includes the removal of the damaged countertop and the cost of the new countertop. The quote does not include the landlords labour to take out the sink and taps and refit them in the new counter top. The landlord testifies that the damaged countertop was only three years old.

The landlord testifies that the laminate in the living room which was only a year old has big scrapes on it to the extent that the laminate is worn right through. This flooring will have to be taken up to the damaged section so that area can be replaced. The landlord testifies that he has not yet had a quote done to replace this damaged section of flooring however the laminate flooring did cost \$1,200.00 a year ago.

The landlord testifies that the tenants failed to leave the carpets in the bedrooms clean. The carpets in the bedrooms were left stained and dirty. The landlord testifies that he has had the carpets cleaned and has provided an invoice from the carpet cleaning company for \$115.00.

The landlord testifies that a tile on the fireplace was also broken off however the landlord was able to glue that tile back on so has not charged the tenants for this work.

The landlord testifies that the tenants were in a fixed term tenancy until the end of January, 2014. As the tenants vacated the unit on December 01, 2013 the landlord had to advertise the unit and managed to get it re-rented for December 15, 2013. The landlord seeks to recover half a month's rent for December of \$800.00.

The landlord refers to the condition inspection report and points out that the tenant KM had signed that report to agree that the report fairly represents the condition of the unit at the end of the tenancy.

The tenants agree that there was some damage to the countertop. The tenant KM testifies that the damage was no bigger than a two dollar coin. The tenant testifies that he went to Rona and was shown a similar countertop for \$400.00 and was also told that it would cost about \$150.00 for Rona to remove and replace the sink and taps and install the new countertop.

The tenants agree that the flooring was damaged in the living room. The tenant KM testifies that the laminate floor was easy to scratch whenever they sat on the settee it would mark the floor.

The tenants dispute the landlords claim for carpet cleaning. The tenants testify that the carpets were left in the same condition as they were in at the start of the tenancy.

The tenant KM testifies that they had verbally agreed the landlord could keep the security deposit to offset against the damages caused during the tenancy. But when the landlord filed his claim for damages for more money the tenants then filed their own claim to recover the security deposit.

The tenants agree at this hearing that the landlord may keep the security deposit of \$800.00.

The landlord testifies that the damaged countertop has a designed edge that you cannot buy in Rona. It also has two corner pieces so extra length has to be purchased in order to cut the corner pieces.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damage to the countertop; I am satisfied from the evidence before me that the countertop was damaged by the tenants regardless of the size of the damage which is in dispute. The fact remains that the tenants are responsible to repair any damage caused during their tenancy. The landlord has meet the burden of proof regarding how much it would cost to replace the countertop taking into consideration its designed edge, the length and corners of the countertop. Consequently I find the landlord is entitled to recover the full amount of the quote for the replacement countertop of **\$698.25** taking into account that the landlord has not charged the tenants for his labour to remove and replace the sink and taps.

With regard to the landlords claim for the damaged floor; the landlord is required to provide evidence showing the actual costs incurred or a quote to determine the actual costs to replace this damaged section of flooring. The tenants agree that some damage to the floor did occur during the tenancy. The tenants argue that the floor scratched easily; however, the tenants should have taken precautions to prevent the floor becoming damaged or replaced the damaged section of the floor at the end of the tenancy. The landlord has testified that the entire floor was fitted at a cost of \$1,200.00 a year ago. Therefore without evidence to show the actual costs to replace the damaged section of floor I must limit the landlords claim to **\$300.00** to replace this damaged section of flooring.

With regard to the landlords claim for carpet cleaning; the landlord has not indicated on the move out report that the carpets were left stained or dirty. In fact the landlord has indicated that the carpets in the bedrooms are in a good condition. As the tenants have disputed the landlords claim that the carpets were left stained or dirty then I find the landlord has not provided sufficient corroborating evidence to meet the burden of proof that the carpets were not clean at the end of the tenancy. The landlords claim for carpet cleaning is therefore dismissed.

With regard to the landlords claim for unpaid rent; the tenancy was a fixed term tenancy which was not due to expire until January 31, 2014. The tenants vacated the unit on December 01, 2013. Consequently the landlord is entitled to recover any loss of rent up to the time the tenancy could have been legally ended or the time the unit was re-rented. As the unit was re-rented for December 15, 2013 I uphold the landlords claim for a loss of rental income of **\$800.00**.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants.

With regard to the tenants application to recover the security deposit; as the tenants have agreed at this hearing that the landlord may keep the security deposit of **\$800.00** I have documented this as such. The security deposit will therefore be offset against the landlord's monetary claim as follows:

Countertop	\$698.25
Flooring	\$300.00
Loss of rent	\$800.00
Filing fee	\$50.00
Less security deposit	(\$800.00)
Total amount due to the landlord	\$1,048.25

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,048.25** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenants. Should the tenants fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

The tenants' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 07, 2014

Residential Tenancy Branch

